MAPA's letter dated January 9, 1974, specified the terms of SRA as follows:

"i) Special Relief Allowance (SRA)

With effect from the 1st of October, 1973, all plantation workers will be paid a temporary allowance as under:-

(a) *Workers whose total earnings for the month do not exceed $300/-*

Monthly-rated workers	. .$30/- p.m.
Daily-rated & piece-rated workers	. . $1.15 cts per normal day worked.

(b) *Workers whose earnings for the month are between $301 and $400*

Monthly-rated workers	. . $20/- p.m.
Daily-rated & piece-rated workers	. . .75 cts per normal day worked.

(c) *Workers whose earnings for the month are between $401 and $500*

Monthly-rated workers	. . $15/- p.m.
Daily-rated & piece-rated workers	. . .60 cts per normal day worked."

The words "per normal day worked" are not the same as "for work done". Remuneration payable for work done is not the same as remuneration payable upon completion of a full day's work. This was the basic misconception which converted an allowance clearly intended to be temporary only and payable over and above wages into remuneration incorporated as part of wages. It is clear that it was a rate fixed by MAPA that SRA would be payable only if the employee has completed a normal day's work for which he is remunerated according to his contract of employment.

Employers pay SRA in various ways. Some may pay SRA because payment of SRA is incorporated in a collective agreement. Some may pay SRA voluntarily and some after negotiations. Each case has to be determined on its own facts to see whether the SRA payable retains its original character or changes to something else. In its true and original concept SRA is a temporary allowance payable over and above the wages of the employees. Unless there is evidence to show that parties have contracted otherwise SRA cannot be regarded as part of wages. In other words unless the parties agree that SRA should be incorporated as part of wages SRA must be regarded according to its original concept and character *i.e.* payable over and above wages. In the instant case the evidence shows that it is payable not for work done but payable only after a normal day's work has been completed by the employee.

We would therefore allow the appeal with costs to the appellants. Deposit to be refunded to appellants.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.; Lobo & Associates.*

COMMISSIONER OF LAND TITLES, PENANG v. LIM THENG HOE

[S.C. (Lee Hun Hoe C.J. (Borneo), Hashim Yeop A. Sani & Wan Hamzah S.C.JJ.) February 25 & August 10, 1987]

[Kuala Lumpur – Supreme Court Civil Appeal No. 319 of 1985]

Land Law – Interim Register – Correction of erroneous entry – Change of endorsement in respect of a holding from "Grant (First Grade)" to "Grant" – Appeal to Land Titles Appeal Board – Questions of law referred to High Court for determination – Whether Commissioner of Land Titles applied the correct section – Whether holding held in fee simple or not – Pre-existing estate – Document of original title – Surrender of old title for Statutory Land Grant – National Land Code (Penang and Malacca Titles) Act, 1963, ss. 15, 18, 31, 34, 40 & 41 – Crown Lands Ordinance (S.S. Cap. 113), ss. 5 & 11.

The Commissioner of Land Titles, Penang, acting under section 34 of the National Land Code (Penang and Malacca Titles) Act, 1963, made a correction of an entry in an Interim Register kept under section 31 of the Act by altering the endorsement in respect of a holding from "Grant (First Grade)" to "Grant." The respondent who was the registered proprietor being aggrieved by the decision of the Commissioner appealed to the Land Titles Appeal Board. The Board subsequently referred the following questions of law for determination by the High Court, by way of case stated –

(a) should the Director (*i.e.* the Commissioner of Land Titles) have applied section 40 or section 41 of the Act?

(b) if section 41 applies, is the title to the holding held in fee simple or not.

The learned Judge of the High Court held in answer to the first question that section 40 should have been applied and in consequence of this answer, he held that question (b) did not arise – see [1987] 2 M.L.J. 89. The appellant appealed.

Held, allowing the appeal: (1) since the owners had surrendered the land to the British Crown and had obtained a Statutory Land Grant, the old titles for the land ceased to exist as from the time of the surrender. Since the old titles had ceased to exist, nothing can descend from them and it cannot be said that the Grant descends from the old titles. It follows that the old titles did not create a pre-existing estate in the holding as stipulated in section 40 of the National Land Code (Penang and Malacca Titles) Act, 1963, and section 40 does not apply to the holding;

(2) the title for the holding in existence immediately before January 1, 1966, was the Grant. This title had been issued under the Crown Lands Ordinance of the Straits Settlements after the subdivision. It descends from no other title except itself. The document of original title to the holding is therefore a statutory land grant issued under the Crown Lands Ordinance and therefore section 41 applies to the holding;

(3) the Statutory Land Grant issued in this case was a grant under Part I of Schedule A to the Crown Lands Ordinance which is subject to the implied covenants stated in section 5 of the Ordinance in the absence of an express provision to the contrary. Such a grant is not a grant in fee simple.

SUPREME COURT.

Mohd. Shaari bin Yusuff, State Legal Adviser, for the appellant.

Lim Kean Chye (*Lee Kok Liang* with him) for the respondent.

Cur. Adv. Vult.

Wan Hamzah S.C.J. (delivering the Judgment of the Court): Section 31 of the National Land Code (Penang and Malacca Titles) Act 1963 requires the Commissioner of Land Titles to maintain a register of all holdings in the State of Penang, to be called the Interim Register. Section 34 empowers the Commissioner, at any time before the title to a holding has become indefeasible under Part VII of the Act, to correct any erroneous entry in the Interim Register. In exercise of his power under section 34, on December 31, 1980, the Commissioner by way of making correction of an entry in the Interim Register altered the endorsement in respect of Holding No. 255, South West District, Mukim 4, Penang, from "Grant (First Grade)" to "Grant." Being aggrieved by the Commissioner's decision to make such alteration, Lim Theng Hoe appealed under section 15 to the Land Titles Appeal Board. Pursuant to section 18 the Board referred the following questions of law for determination by the High Court, Penang, by way of case stated:

"(a) Should the Director (*i.e.* the Commissioner of Land Titles) have applied section 40 or section 41 of the Act?

(b) if section 41 applies is the title to Holding No. 255 held in fee simple or not?"

After hearing submissions made on behalf of Lim Theng Hoe and the Commissioner of Land Titles in the High Court, Edgar Joseph Jr. J. gave the following answers:

To question (a):
Section 40 should have been applied.

To question (b):
In consequence of the answer to question (a), question (b) does not arise.

The Commissioner now appeals to the Supreme Court against the learned Judge's decision.

It is necessary to set out some particulars relating to Holding No. 255. This holding was originally part of Lot No. 240 which was 347a. 2r. Op. in area. The titles for Lot No. 240 were the following:

Grant 2627, Grant 1777, Grant 2609, Grant 1875, Indenture 53, Indenture 60, Indenture 71, Indenture 124, Indenture 140, Indenture 177, Lease 10018 and Lease 10044.

For the sake of convenience we shall refer to these titles for Lot No. 240 as the old titles. In 1953 Lot No. 240 was subdivided. For the purpose of the subdivision the owners by deed of October 15, 1953, conveyed and surrendered to the British Crown Lot No. 240 under the Crown Lands Ordinance (S.S. Cap. 113). One of the subdivided lots was Holding No. 255, which was 300a. Or. 20p. in area. As a result of the subdivision 19 grants were issued for the subdivided lots. For Holding No. 255 Statutory Land Grant No. 194 was issued.

We now revert to question (a) referred to the court by the Land Titles Appeal Board, *i.e.* the question whether the Commissioner of Land Titles should have applied section 40 or section 41 of the National Land Code (Penang and Malacca Titles) Act to Holding No. 255 in the entry in the Interim Register. It is necessary to set out in full the provisions of the two sections:

"40. Where the document of original title to a holding is a grant, indenture or other form of title made or issued by the Dutch Authorities or by the East India Company or by any Government of the State, and such title created a pre-existing estate in such holding consisting of or in the opinion of the Commissioner equivalent to an estate in fee simple, a grant (first grade) shall be issued in respect of such holding.

41. Where the document of original title to a holding is either a statutory grant issued under the Lands Ordinance or a lease for nine hundred and ninety-nine years a grant shall be issued in respect of such holding."

The words "document of original title" are defined in section 4(1) to mean the original grant, indenture, lease or other instrument made by the Dutch Authorities, the East India Company, the Crown or the State, as the case may be, from which the pre-existing title to a holding or part of a holding descends or is presumed to descend. The word "pre-existing" is defined in section 4(1) to mean, generally, in existence immediately before and not having lapsed or expired before the appointed day. Under section 4(1) the appointed day means the day appointed by the Minister for the coming into force in Penang of the provisions of the Act, which was January 1, 1966. The title to Holding No. 255 in existence immediately before January 1, 1966, was Grant No. 194. The question to be asked is whether Grant No. 194 descends or is presumed to descend from the old titles. Since by the deed of October 15, 1953, the owners surrendered Lot No. 240 to the British Crown, the old titles for Lot No. 240 ceased to exist as from the time of the surrender. Since the old titles had ceased to exist since October 15, 1953, nothing can descend from them, and it cannot be said that Grant No. 194 (which was in existence immediately before January 1, 1966, for Holding No. 255) descends from the old titles. Therefore it follows that the old titles did not create a pre-existing estate in Holding No. 255 as stipulated in section 40; and section 40 does not apply to Holding No. 255.

As already stated, the title for Holding No. 255 in existence immediately before January 1, 1966 was Grant No. 194. This title had been issued under the Crown Lands Ordinance (S.S. Cap. 113) after the subdivision. It descends from no other title except itself. In other words the document of original title to Holding No. 255 is a statutory grant issued under the Crown Lands Ordinance (S.S. Cap. 113), and therefore section 41 applies to Holding No. 255.

As regards question (b) we understand the question to be whether the estate in the Holding No. 255 created by Grant No. 194 consists of a fee simple or not. Section 11(4) in Part I of the Crown Lands Ordinance (Cap. 113) provides as follows:

"In the case of grants issued under this section not being issued in exchange for a grant issued under this Part such modification may be made in the form of grant prescribed as are necessary in order to make the new tenure not less beneficial than the original one."

Except in a case falling under section 11(4), all grants issued under section 11 must be in the form of Schedule A to the Ordinance. This is so because section 4 provides that every grant of land issued under Part I shall be in the form or to the effect of Schedule A. Grant No. 194 for Holding No. 255 is substantially in the form of Schedule A except for the reference therein to the subdivision. The question is whether Grant No. 194 has on the face of it any modification which shows that it was issued under section 11(4) to make the new tenure not less beneficial than the original one under the old titles. We find that there is no such modification on the face of Grant No. 194. So Grant No. 194 is a grant under Part I, which under section 5 is subject to the implied covenants stated in that section and under section 6 is subject to the conditions stated in that section, in the absence of an express provision to the contrary. It is common ground that grants under Part I are not in fee simple, and grants under Part II are in fee simple.

Despite the words "modification may be made" appearing in section 11(4) it was submitted on behalf of the respondent that Grant No. 194 is a grant issued pursuant to section 11(4) in which the tenure should be not less beneficial than the original one under the old titles and since it was issued pursuant to section 11(4) it is a grant under Part II. The submission implies an argument either that the words meant that the modification must be made or that the High Commissioner was wrong in not exercising his discretion to make the modification. In our judgment the words give discretion to make the modification. As to whether the High Commissioner was wrong in the exercise of his discretion, that is not the question which the Board has asked the court to answer. There is no evidence that Ban Hin Company Limited raised objection or protest at the time when the grant was issued to it. Besides, we do not see how the respondent can raise the objection now since he accepted the conveyance of Grant No. 194 in its present form from Ban Hin Company Limited.

Therefore in our judgment the correct answers should be as follows:

To question (a):

The Commissioner of Land Titles should have applied section 41.

To question (b):

Grant No. 194 for Holding No. 255 did not create an estate in fee simple.

The appeal is allowed with costs here and in the court below. The deposit should be refunded to the appellant.

Appeal allowed.

Solicitors: *Lee Kok Liang & Co.*

TENGKU MOHAMED ZAIRUDDEEN BIN TENGKU MOHAMED ZAID v. WAZURAIYAH BTE MOHAMAD

WAZURAIYAH BTE MOHAMED v. MEGAT NAJMUDDIN & ORS.

[S.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman & Syed Agil Barakbah S.C.JJ.) September 18, 1985 & August 17, 1987]

[Kuala Lumpur – Federal Court Civil Appeal No. 145 of 1984 and Supreme Court Civil Appeal No. 167 of 1985]

Land Law – Caveat – Application to remove private caveat – Application made by person not caveatee – Onus on person to show sufficient grounds for treating him as a person claiming such an interest as would make him aggrieved by the existence of the caveat – Malay Reservation land – Transfer in breach of the Malay Reservation Enactment – National Land Code, s.327.

Land Law – Malay Reservation land – Attempt to transfer land to a non-Malay and non-native of Kelantan – Land sold to a company – Land transferred to a person as trustee for company – Attempt at dealing contrary to Enactment – Kelantan Malay Reservations Enactment, 1930, ss. 7, 12 & 13A – Kelantan Land Enactment, s.104.

In Civil Appeal No. 145 of 1984 the respondent, Wazuraiyah, had applied to remove a private caveat imposed on a piece of land in Kelantan by the appellant. Tengku Zaid, the registered owner of the land, had agreed to sell the land to Zaid Holdings Sdn. Bhd. for $165,000. He had appointed one Rosnani as his attorney to execute the sale of the land. The purchase price had been paid in full. The respondent was appointed as trustee by Zaid Holdings Sdn. Bhd. to hold the land. It was a condition of the sale that Zaid Holdings was to settle all Tengku Zaid's personal loans with two private companies, which was subsequently done. Rosnani, acting under the power of attorney, transferred the land to Wazuraiyah. Tengku Zaid sent a notification of the disposal of the land to the Director-General of Income Tax under the Real Property Gains Tax Act, 1976. Subsequently Tengku Zaid died and his son the appellant lodged a caveat against the land. The transfer of the land to Wazuraiyah could not be completed because of the caveat. The learned trial judge found that the transfer was properly executed and that the appellant's allegations of fraud were not substantiated. He held that the appellant as caveator had failed to satisfy the court that the caveat should remain and he therefore ordered the caveat to be removed. The appellant appealed.

In Civil Appeal No. 167 of 1985 the appellant, Wazuraiyah, had applied to remove the private caveat registered in respect of the same land and entered by the respondents. Zaid Holdings had passed a resolution approving the purchase of the land from Tengku Zaid and substituting itself for Tengku Zaid in a joint venture agreement between Tengku Zaid and Gunung Petaling. The land had been transferred to the appellant. The learned trial judge held that the appellant had not raised sufficient grounds for treating her as a person claiming an interest in the land as would, if established, make her aggrieved by the existence of the caveat. He also held that the respondents had succeeded in satisfying the court that they had an interest in the property which raised a serious question to be tried and that on the balance of convenience it would be better to maintain the *status quo* until the completion of the trial. The appellant appealed.

Held: (1) the question in Civil Appeal No. 145 of 1984 is whether the respondent, Wazuraiyah, has satisfied the court that there are sufficient grounds in fact and in law for treating her as a person claiming such an interest in the land as would make her aggrieved by the existence of the caveat;

(2) the caveated land is Malay Reservation land and in the absence of evidence, it must be assumed that Zaid Holdings had abandoned the attempt to be included as a company in Schedule D of the Kelantan Land Enactment or had failed to obtain such approval. In either event the fact of the respondent, as trustee for Zaid Holdings, being made registered owner of the land could clearly be in contravention of section 12 of the Kelantan Malay Reservations Enactment, 1930, and therefore null and void;

(3) in the result the respondent has failed to show that she is a person aggrieved under section 327 of the National Land Code and the caveat should remain. The appeal in Civil Appeal No. 145 of 1984 is therefore allowed;

(4) the issue in Civil Appeal No. 667 of 1985 is whether the appellant, Wazuraiyah, is a person aggrieved. In this case the transfer of the land to the appellant as trustee for Zaid Holdings was in breach of the Malay Reservations Enactment and her appointment as trustee was an attempt at a dealing contrary to section 12 of the Enactment and therefore null and void. The appeal must therefore be dismissed.

Cases referred to:

(1) *Eng Mee Yong & Ors.* v. *V. Letchumanan* [1979] 2 M.L.J. 212.

(2) *Registrar of Titles, Johore* v. *Temenggong Securities Ltd.* [1976] 2 M.L.J. 44.

(3) *Foo Say Lee* v. *Ooi Heng Wai* [1969] 1 M.L.J. 47.

(4) *Lee Ah Thaw & Anor.* v. *Lee Chun Tek* [1978] 1 M.L.J. 173.